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TO: Commissioner for Patents, Mail Stop Appeal Brief, Examiner Melanie Jo Hand
- United States Patent and Trademark Office

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Application No.: 10/600,774

Inventor(s): Bryan K. Feller et al.

Filed: June 20, 2003

Docket No.: 9281

Confirmation No.: 5936

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- 1) Appeal Brief (9 pages)
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Application No. : 10/600,774
Inventor(s) : Bryan K. Feller et al.
Filed : June 20, 2003
Art Unit : 3761
Examiner : Melanie Jo Hand
Docket No. : 9281
Confirmation No. : 5936
Customer No. : 27752
Title : SANITARY NAPKIN FOR CLEAN BODY BENEFIT

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed in reply to the Notice of Panel Decision from Pre-Appeal Brief Review mailed on November 20, 2007.

A timely Notice of Appeal and Pre-Appeal Brief Request for Review were filed on September 7, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 4-6, 10, 11, 15, and 16 are rejected in the present application and are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the most recent final rejection.

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SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention is directed to an absorbent article comprising a fluid permeable facing layer having a first elastic modulus and comprising a topsheet and a secondary topsheet, an absorbent core joined to the facing layer and having a second elastic modulus, and a fluid impermeable backsheet joined to the facing layer (*see* FIG. 1; page 3, lines 23-28; and page 10, line 31 to page 11, line 10). The facing layer and the absorbent core are joined at substantially the entirety of their respective interfacial surfaces (*see* page 13, lines 10-13). Under an equal amount of strain of from about 1% to about 5%, the first elastic modulus of the facing layer is greater than the second elastic modulus of the absorbent core (*see, e.g.*, page 11, lines 13-16). This particular structure provides an absorbent article that exhibits improved body fit and comfort, while still absorbing all or most of any fluid discharges experienced by the wearer (*see, e.g.*, page 7, lines 8-15).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 4-6 and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al., US 4,865,596, in view of Takahashi et al., US 6,329,465.

Claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Cinelli et al., US 2002/0013565 A1.

Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Ohashi et al., US 2002/0065498 A1.

ARGUMENTS

Appellants respectfully submit that Claims 1, 4-6, 10, 11, 15, and 16 are patentable over the cited references.

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Rejection Under 35 U.S.C. §103(a) Over Weisman et al. In View of Takahashi et al.

Claims 1, 4-6 and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al., US 4,865,596, in view of Takahashi et al., US 6,329,465. Appellants respectfully traverse this rejection.

Appellants submit that the Office Action has failed to set forth a *prima facie* case of obviousness in accordance with MPEP §2143. The present claims require, *inter alia*, a fluid permeable facing layer having a first elastic modulus and comprising a topsheet and a secondary topsheet. The present claims further require, *inter alia*, an absorbent core joined to the facing layer and having a second elastic modulus, wherein the first elastic modulus of the facing layer is greater than the second elastic modulus of the absorbent core.

The Office Action properly admits that Weisman et al. do not teach a facing layer that comprises a topsheet and a secondary topsheet. The Office Action further properly admits that Weisman et al. therefore do not teach a facing layer having an elastic modulus that is greater than the elastic modulus of an absorbent core joined to the facing layer.

However, the Office Action then cites the teachings of Takahashi et al. and improperly asserts that “[i]t would have been obvious to one of skill in the art to modify the article of Weisman by substituting the liner material taught by reference to Roberts with the liner material taught by Takahashi to provide a facing layer with increased transparency, strength and moldability.”

The Office Action asserts that Takahashi et al. teach a facing layer comprising a topsheet and a secondary topsheet at col. 46, lines 15-20. Appellants submit that this assertion is not supported, as this passage of Takahashi et al. describes a multi-layer film structure that is used as a packaging film, such as for packaging fresh red meat. There is no discussion or suggestion in Takahashi et al. that this multi-layer film structure would be suitable as a facing layer in an absorbent article comprising a topsheet and a secondary topsheet, such as presently claimed.

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Furthermore, the present claims in the instant application require a fluid permeable facing layer. Although the multi-layer film structure taught by Takahashi et al. can be oxygen permeable ("to allow the fresh red meat to 'bloom' to the desired bright red color" – *see* col. 45, lines 22-27), the multi-layer film is clearly fluid impermeable, as packaging fresh red meat in a fluid permeable film would be a messy and unsanitary proposition. Moreover, Takahashi et al. teach that its films are water impermeable at, e.g., col. 55, lines 1-4.

It would therefore be improper to substitute the fluid impermeable film taught by Takahashi et al. for the lining layer of Weisman et al., as such a substitution would render the fluid absorbency properties of the Weisman et al. absorbent articles useless, since the fluid would not be able to penetrate through the film of Takahashi et al. and into the absorbent core of the article of Weisman et al. As such, the proposed modification would render the absorbent article of Weisman et al. unsatisfactory for its intended purpose. See MPEP 2143.01. Appellants therefore submit that the proposed modification is improper and the combination of Weisman et al. and Takahashi et al. fails to establish a *prima facie* case of obviousness.

Appellants therefore respectfully submit that the current rejection of Claims 1, 4-6 and 11 under 35 U.S.C. §103(a) over Weisman et al. in view of Takahashi et al. is improper, and that Claims 1, 4-6 and 11 are allowable over the cited references.

Rejection Under 35 U.S.C. §103(a) Over Weisman et al. In View of Takahashi et al. and Further In View of Cinelli et al.

Claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Cinelli et al., US 2002/0013565 A1. Appellants respectfully traverse this rejection.

For the reasons discussed *supra* with respect to the rejection of Claims 1, 4-6 and 11, *inter alia*, Appellants submit that the rejection of Claim 10 over Weisman et al. in view of Takahashi et al. and further in view of Cinelli et al. is improper, and that Claim 10 is allowable over the cited references.

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Rejection Under 35 U.S.C. §103(a) Over Weisman et al. In View of Takahashi et al. and
Further In View of Ohashi et al.

Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Ohashi et al., US 2002/0065498 A1. Appellants respectfully traverse this rejection.

For the reasons discussed *supra* with respect to the rejection of Claims 1, 4-6 and 11, *inter alia*, Appellants submit that the rejection of Claims 15 and 16 over Weisman et al. in view of Takahashi et al. and further in view of Ohashi et al. is improper, and that Claims 15 and 16 are allowable over the cited references.

SUMMARY

In view of all of the above, it is respectfully submitted that all rejections be reversed and Claims 1, 4-6, 10, 11, 15, and 16 be allowed.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY

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CLAIMS APPENDIX

1. An absorbent article comprising,
 - a. a fluid permeable facing layer having a first elastic modulus, wherein the facing layer comprises a topsheet and a secondary topsheet;
 - b. an absorbent core joined to the facing layer, the absorbent core having a second elastic modulus;
 - c. wherein at equal strain from about 1% to about 5% the first elastic modulus is greater than the second elastic modulus and wherein the facing layer is joined to the absorbent core at substantially the entirety of their respective interfacial surfaces; and
 - d. a fluid impermeable backsheet joined to the facing layer.
4. The absorbent article of Claim 1, wherein the density of the absorbent core is between about 0.050 g/cm³ and about 0.15 g/cm³.
5. The absorbent article of Claim 1, wherein the facing layer has a caliper and the absorbent core has a second caliper, and wherein the ratio between the facing layer caliper and the absorbent core caliper is from about 1:3 to about 1:20.
6. The absorbent article of Claim 1, wherein the absorbent article is a catamenial device.
10. The absorbent article of Claim 1, wherein said topsheet is an apertured, formed film topsheet.
11. The absorbent article of Claim 1, wherein said secondary topsheet is a nonwoven web.
15. The absorbent article of Claim 1, further comprising a pair of deep-embossed channels, the channels defining an effective width.

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16. The absorbent article of Claim 15, wherein said effective width is from about 20 mm to about 50 mm.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.